

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.581 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

- =====
1. Vidya Sah, son of Sheetal Sah
 2. Sudama Sah, son of Seetal Sah
 3. Bashistha Sah, son of Sudama Sah
 4. Manoj Sah, son of Laksh Sah, all resident of village Narayanchak, P.S. Marhowrah, District Saran
 5. Madan Sah, son of Sudama Sah, resident of village Siswa Rasulpur, P.S. Marhawra, District Chapra

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Naresh Dikshit with
Mr. Brij Bihari Tiwary, Advocates

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 04-01-2018

This appeal is directed against the judgment dated 9.8.2002 and order dated 13.8.2002 passed by Sri Amaresh Kumar Lal, 6th Additional Sessions Judge, Chapra in Sessions Trial No. 301 of 1998, whereby and whereunder learned trial court has convicted the appellants for the offence under Sections 324/149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and a fine of Rs.1000/- each with default clause.

2. The prosecution case, as enumerated from the FIR, is that P.W.4, Rajrup Sah while going to his newly constructed house was surrounded by the appellants near the house of accused Sudama Sah, accused Madan Sah (since died) and Vidya Sah caught hold of him, accused Madan Sah and Bashistha Sah assaulted him by Garasa on his



neck causing injury and he fell down. Thereafter accused Sudama Sah assaulted him with Farsa on his head causing injury and accused Manoj Sah assaulted him with Farsa causing injury on his left arm. Further prosecution case is that thereafter the neighbours came there and took him to the hospital. The reason behind the occurrence is that the marriage of the accused Manoj Sah, son of Lakhi Sah, was solemnized with the daughter of Asharfi Sah and the informant was the mediator and there was litigation between Lakhi Sah and Asharfi Sah and Lakhi Sah wanted that the informant should intervene to get the matter compromised but the informant refused to do so.

3. On the basis of aforesaid fardbeyan Marhowrah P.S. Case No. 15 of 1998 was registered on 8.2.1989 and after investigation the police submitted charge sheet against all the accused appellants under Sections 307/149 IPC. It further appears that later on accused appellant Madan Sah died. After cognizance the case has been committed to the court of sessions which ultimately came to the file of Sri Amaresh Kumar Lal, the then 6th Additional Sessions Judge, Chapra.

4. In course of trial altogether nine witnesses have been examined on behalf of the prosecution, they are Tileshwar Sah (P.W.1), who claims to be an eye-witness to the occurrence, Sheodatt Singh (P.W.2), who claims to be an eye-witness to the occurrence, Raj Kumar Sah (P.W.3), who claims to be an eye-witness to the



occurrence, Rajrup Sah (P.W.4), who is informant and injured in this case, Dr. Mahesh Kumar Nathani (P.W.5), who has examined the injured, Binayak Singh (P.W.6), Bhagwan Suren (P.W.7), Dr. Binod Kumar Singh (P.W.8), who is Radiologist and prepared X-ray report and Arun Kumar Pandey (P.W.9), who was an employee of the Dispensary.

5. Defence of the accused is of complete denial of the manner of occurrence and counter case being filed by them in which appellant Sudama Sah had received injuries, which appears from Annexure A and the aforesaid fact while appearing from the evidence of D.W.1, who is none else but appellant Sudama Sah himself and D.W.2 is Shankar Thakur, who has been examined on behalf of defence.

6. Learned trial court considering the entire evidence has not found the case true under Sections 307/149 IPC against the appellants as the injury as the injury has not been free from the reasonable doubt as X-ray plate number is different in the report from the original one and also come to the finding that the evidence goes to show that accused have no intention to kill the informant. Learned trial court has discussed the defence plea about the counter case and also injury on the person of Sudama Sah, appellant, but had no assigned any reason for discarding the same. However, considering the facts and circumstances, learned trial court has convicted the appellants under



Sections 324/149 IPC and sentenced them as stated above.

7. The main contention of learned counsel for the appellants is that the learned trial court has not given any finding on the defence plea of the counter case in which appellant Sudama Sah received four injuries, one of them was a sharp cutting wound and further submitted that the trial court has also not considered the aspect of the matter that there is no eye-witness to the occurrence as P.W.1, Taleshwar Sah, claims to be an eye-witness but his evidence itself shows that it was 7.30 in the night and source of identification claims to be the lantern and he has also given a vivid picture of the occurrence, which does not appears to be probable in the lantern light. As such, he is not an eye-witness and so far P.W.4, Rajrup Sah, the informant, is concerned, he has also given a detailed description of the appellants on identification but the occurrence is at 7.30 P.M. in the night and it was winter season, as such, the claim of the informant (P.W.4) of witnessing the whole occurrence giving vivid picture of the occurrence is not probable in the facts and circumstances of the case. It is also submitted that there was no proper compliance of Section 313 Cr.P.C., which is mandatory provision and general question has been asked from all the appellants and no specific circumstances which has come against them has been put to the accused persons and in this connection he has referred to a decision of the Hon'ble Apex Court in the case of Sukhjit Singh vs. State of Punjab : (2014) 10 SCC



270. Further submission of learned counsel is that evidence of P.W.1 itself shows that Sudama Sah and Manoj Sah were not present at the time of occurrence and they came when P.W.4 fell down and that also creates a serious doubt about the manner of occurrence as alleged in the prosecution. Learned counsel for the appellants has assailed the impugned judgment and submitted that the same suffers from infirmities, as stated above.

8. On the other hand, learned counsel for the State has submitted that there are consistent evidence available on record to show that the informant (P.W.4) had received injuries and the evidence of P.W.4 appears to be free from any embellishment and the same has been supported by the evidence of Doctor, who has found several injuries on the person. Further submission is that no doubt appellants have not been convicted under Section 307 IPC but considering the various circumstances, such as, there was difference in the X-ray report and also on some other discrepancies but there is consistent material available on the record showing conviction of the appellants under Sections 324/149 IPC and there is no infirmity in that.

9. On perusal of the evidence it appears that the trial court has not found the appellants guilty under Sections 307/149 IPC. Further the trial court has also not believed the injury to be grievous in nature on the ground that X-ray plate number was different in the



report and hence he has not found the evidence in that regard to be believable. Further learned trial court has not found it a case in which appellants were carrying intention to commit murder of P.W.4. However, learned trial court has also come to a conclusion that P.Ws. 2 and 3 do not appear to be eye-witnesses to the occurrence. However, relying upon the evidence of P.W.4, supported by the evidence of P.W.5, Dr. Mahesh Kumar Nathani and also corroborated by the evidence of Tileshwar Sah (P.W.1), who has also been found to be an eye-witness by the trial court holding the conviction under Sections 324/149 IPC.

10. It appears from perusal of the record that defence has come with a case that Sudama Sah has been assaulted and for which he has lodged a case being Marhowrah P.S. Case No. 13 of 1998, prior to the present case and in that case Sudama Sah had received injuries and register was proved by D.W.2. Though learned trial court has discussed the aforesaid aspect of the matter but he has disbelieved the prosecution story on the ground that P.W.7, who is I.O. of the case has also found the blood on the place of occurrence and he has further stated that the case instituted by accused Sudama Sah is palpably false and he has made allegation in the fardbeyan that on 8.2.1998 at about 9 P.M. the informant Rajrup Sah and others assaulted him, his son, accused Madan Sah and his daughter-in-law, Raj Kumari Devi but the informant was examined by the Doctor at Sadar Hospital at 9.50 P.M.



and that makes the whole story unbelievable and P.W.7 has also stated that final form was submitted against the informant and others. In this regard the defence has drawn my attention to the evidence of P.W.1 which shows that Sudama Sah and Manoj Sah came at the place of occurrence when informant Rajrup Sah fell down. Hence, the evidence of P.W.1 creates a serious doubt about the prosecution case. Furthermore, Sudama Sah has been examined in this case as D.W.1 and he has also stated about the injuries found on his person but the same has been disbelieved by learned trial court, on the basis of evidence of I.O. (P.W.7). As discussed above, the evidence of P.W.1 shows that Sudama Sah and Manoj Sah came later at the place of occurrence which is against the prosecution case. Sudama Sah, that Sudama Sah had appeared at the dock as D.W.1 and he has categorically stated he, his son and daughter-in-law were assaulted by informant Rajrup Sah and others and fardbeyan to that effect was recorded by the I.O. (P.W.7) and he has proved the fardbeyan as Ext.A also. Though this witness has admitted that final form has been submitted in that case. Apart from that, injury register was also brought on record as Ext.C in this case in support of the contention that Sudama Sah had also received injuries. However, this evidence was disbelieved by the trial court on the basis of evidence of P.W.7.

11. Furthermore, in this case learned trial court has found P.Ws. 2 and 3 to be not eye-witnesses to the occurrence and P.W.6



has been declared hostile in this case and he has relied upon evidence of P.Ws. 4 and 1 only. Further evidence of P.W.1 itself shows that he has identified the appellants on the light of Lenten and it was 7.30 in the night in winter season and he has also given vivid description of the occurrence which does not appear to be probable at 7.30 P.M. in the month of February. Similarly, the evidence of P.W.4, who is informant in this case, giving detailed description of appellants by each of the accused persons at 7.30 in the night, does not inspire any confidence specially that there was case and counter case between the parties and he was made accused in the counter case filed by appellant Sudama Sah.

12. Apart from that, learned counsel for the appellants has vehemently argued that there is proper compliance of provisions of Section 313 Cr.P.C., as general questions were put to all the appellants and no specific questions were put, stating the circumstances come against each of the appellants and relied upon a decision of Hon'ble Apex Court in Sukhjit Singh's case (supra). On perusal of the aforesaid judgment it appears that Hon'ble Apex Court after considering the decision of four-Judge Bench decision in Tara Singh vs. State in paragraph-11 and also considering the three-Judge Bench decision in **Hate Singh Bhagat Singh vs. State of Madhya Pradesh** in paragraphs- 11 &12 of the said judgment, which are as follows:

“11. In this context, we may profitably refer to a four-



Judge Bench decision in Tara Singh v. State wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus : (AIR pp. 445-46, para 30)

“30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

12. In Hate Singh Bhagat Singh v. State of Madhya Bharat, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the



statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.””

And has come to a conclusion in paragraph-14 of the said judgment as follows :

“14. In view of the aforesaid enunciation of law, there can be no scintilla of doubt that when the requisite questions have not been put to the accused it has caused immense prejudice to him, more so, when there is no evidence to establish his complicity in the alleged abduction.”

13. In the present case, on perusal of the statement of the accused appellants under Section 313 Cr.P.C. it appears that the appellants were asked long string questions, and they have not been asked about the specific allegation of assault against them, rather complex question including all the assaults made by other accused persons the aforesaid questions were asked. Hence it appears that there is no proper application of Section 313 Cr.P.C., which is mandatory in nature which caused immense prejudice to him.

14. Considering the same as well as the discussions made



above, it appears that the conviction of the appellants suffers from several infirmities. The learned trial court has not considered the aforesaid aspect of the matter.

15. Accordingly, the appeal is allowed. The judgment of conviction and the order of sentence, recorded by trial court are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

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